Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM 1979

NO. 79-1803

JONATHAN GRASSI;
JAMES R. GREEN;
and
LARRY A. CANNON,

Petitioners,

v.

THE STATE OF LOUISIANA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF LOUISIANA

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THE STATE OF LOUISIANA

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT FOR THE STATE OF LOUISIANA

The petitioners, JONATHAN GRASSI, JAMES R. GREEN and LARRY A. CANNON, respectfully ask that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court for the State of Louisiana.

OPINIONS BELOW

On December 13, 1979 the Supreme Court of the State of Louisiana affirmed the judgment of the Sixteenth Judicial District Court, Parish of St. Martin. See Appendix A. A petition for a rehearing was filed on or about the 17th of January, 1980, which was subsequently denied.

JURISDICTION

Jurisdiction of this appeal is grounded in a December 13, 1979 decision of the Supreme Court for the State of Louisiana and their subsequent denial of an application for a rehearing. The statutory provision conferring jurisdiction for this appeal is 28 U.S.C. 1257.

QUESTION PRESENTED FOR REVIEW

1. Whether the proper standard was used when common law property concepts were arbitrarily applied to determine whether Petitioners' reasonable expectation of privacy was violated for purposes of determining the applicability of the Fourth Amendment, when law enforcement authorities trespassed onto private property owned by a co-defendant and secreted themselves for purposes of surveillance, when said surveillance could not have been accomplished absent the trespass.

CONSTITUTIONAL PROVISION INVOLVED

Fourth Amendment, United States Constitution:

The right o t he people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

PREFATORY STATEMENT

All references to the record in this case will be preceded by the capital letter "T".

STATEMENT OF THE CASE

Petitioners were charged with violating the state laws of Louisiana in that they possessed with intent to distribute marijuana. Petitioners, with the other co-defendants in the case, filed a joint motion to suppress evidence, including the contraband seized. This motion attacked the constitutional validity of the search and seizure in question. This motion was denied and as a result of said denial the petitioners entered a plea of guilty on March 12, 1979 expressly reserving their right to appeal denial of the Motion to Suppress Evidence. An appeal was taken to the Supreme Court of The State of Louisiana, which affirmed the judgment on December 13, 1979. A petition for a rehearing was filed on or around the 17th of January, 1980, which was subsequently denied.

Petitioner respectfully submits the following chronology with respect to the "search and seizure" issue presented here.

On June 15, 1978, at approximately 3:00 o'clock, p.m., a joint task force of United States Customs Air Officers and Louisiana State Police commenced a surveillance of a rural residential compound, which was the home of co-defendants, Jeff H. Dupuis and Bernis H. Davison. This surveillance was begun following the arrival of a refrigerator truck and two bobtail trucks at the property. This residential compound, including its environs, is bounded on the west by State Highway 349; on the north by the Parish Road; and on the east and south by the edge of plowed fields of growing sugar cane, the field to the south being included in the Dupuis property. (T-500-03; 506-10; 519; 520; 522; 523; 529; 537).

The daylight activities of the joint governmental task force was limited to "roving surveillance" from vehicles

operating on the two public highways which formed the north and west borders of the Dupuis property. The roving surveillance consisted of officers driving by the property to briefly ovserve what, if any, activity was taking place. (T-343-45; 565; 647; 468; 668).

Frustrated by their inability to observe either the trucks or any other activity within the compound from their vantage point on the public highway, United States Customs Officers Wade and Louisiana State Trooper Le Jeune proceeded on foot through the Dupuis property and surreptitiously secreted themselves in the sugar cane field immediately south of the Dupuis residence. The law enforcement officers moved about within the 3-4 foot high cane fields, located on the Dupuis property from time to time. (T-432; 437; 439; 443-448; 451; 475; 567; 568; 572; 577; 578; 593; 594; 595; 641; ∪42.)

The outer boundaries of the Dupuis property were clearly defined by a gully on the south, the Parish Road on the north and a fence along Highway 349 on the west side. (T-439; 443-46; 520; 522; 532; 534-35; 541-42; 577; 578; 593-95). Officers testified that at all times their on-foot surveillance activities were conducted from within these boundaries, but they indicated that they were not at all concerned with the possibility of being on private property or on the Dupuis property. While the officers were generally located approximately 25 to 40 yards south of the Dupuis house, at least once, Louisiana State Police Officer Le Jeune crept to the edge of the cane, approximately ten (10) yards from the house. (T. 380-82; 439; 443-46; 446-48; 475; 532; 534-35; 541-42; 567; 568; 572; 577-79; 593; 595; 607-08; 641-42).

During the evening, the officers observed the petitioners having a barbeque in the Dupuis' backyard. During

this time, the three trucks remained stationary within the compound. (T-451; 482; 567).

At approximately 11:30 p.m., four hours after the initial trespass, the officers observed the barbeque come to an end. At that time, they observed activities around the trucks in question. These activities included backing one of the bobtail trucks, flush to the rear of the refrigerator truck and of transferring large bales of an unknown substance from one truck to another. Officer Wade admitted in testimony that he had no objective reason for believing that the bales contained contraband, although he suspected as much. (T-470-484).

After observing the bales, officer Wade contacted Customs Air Officer Joachim who in turn proceeded to telephone a United States Magistrate for purposes of obtaining a search warrant. A warrant was issued which was later stipulated by the parties to be invalid. A search and seizure then went forward, which resulted in the discovery of contraband. As a result of the pleas entered in this case, the petitioners were sentenced to a term of three (3) years and fined a total of $15,000.00, with two additional years to be served upon the default of the payment of said fine. (T-797).

REASON FOR GRANTING THE WRIT

THIS CASE PRESENTS SIGNIFICANT ISSUES DEALING WITH WHETHER THE ARBITRARY APPLICATION OF COMMON LAW PROPERTY CONCEPTS IS THE PROPER STANDARD TO BE APPLIED WHEN DETERMINING WHETHER A PARTY ON PRIVATE PROPERTY HAS HIS REASONABLE EXPECTATION OF PRIVACY VIOLATED FOR PURPOSES OF DETERMINING THE APPLI-

CABILITY OF THE FOURTH AMENDMENT, WHEN LAW ENFORCEMENT AUTHORITIES TRESPASSED ONTO PRIVATE PROPERTY OWNED BY A CO-DEFENDANT AND SECRETED THEMSELVES FOR PURPOSES OF SURVEILLANCE, WHEN SAID SURVEILLANCE COULD NOT HAVE BEEN ACCOMPLISHED ABSENT THE TRESPASS. REVIEW IS NECESSARY TO BRING TO THIS COURT'S ATTENTION A PRECEDENT SETTING ERROR OF THE SUPREME COURT OF LOUISIANA CONCERNING THE CRITICAL QUESTION OF WHAT CONSTITUTES A REASONABLE EXPECTATION OF PRIVACY. REVIEW IS FURTHER NECESSARY AS NUMEROUS CIRCUITS AND STATES CONTINUE TO APPLY STANDARDS IN DETERMINING WHAT IS A REASONABLE EXPECTATION OF PRIVACY WHICH ARE FOUNDED ON PRECEDENT PREDATING *KATZ V. UNITED STATES*, 389 U.S. 347 (1967) AND AS ARE SUCH IN DIRECT CONTRAVENTION TO THAT CASE.

A. PETITIONERS FOURTH AMENDMENT RIGHTS WERE VIOLATED WHEN AN IMPROPER, OUTMODED STANDARD WAS USED TO DETERMINE IF THE PETITIONERS WERE ENTITLED TO FOURTH AMENDMENT PROTECTION WHERE THEIR REASONABLE EXPECTATION OF PRIVACY WAS VIOLATED, WHEN LAW ENFORCEMENT AUTHORITIES TRESPASSED ONTO PRIVATE PROPERTY AND SECRETED THEMSELVES FOR PURPOSES OF SURVEILLANCE, WHEN SAID SURVEILLANCE COULD NOT HAVE BEEN ACCOMPLISHED ABSENT THE TRESPASS.

The Fourth Amendment prohibits unreasonable searches and seizures. A party however is not entitled to the protection of the Fourth Amendment unless there exists a reasonable expectation of privacy. *Rakas v. Illinois*, _____ U.S. _____, 99 S.Ct. 421, 58 L.Ed. 2d 387 (1978). To determine if there exists a reasonable expectation of privacy it is necessary to determine if a party has exhibited an actual subjective expectation of privacy and, second, that the expectation be one that society is prepared to recognize as reasonable. *Katz v. United States*, 389 U.S. 347 (1967). This definition was deliberately intended to be ambiguous, since "what is reasonable in one setting may be unreasonable in another." *United States v. Jackson*, 588 F.2d 1046, 1052 (5th Cir. 1979). Accordingly, a case by case determination must be made to determine if there is a reasonable expectation of privacy since *Katz* "was written to resist captivation in any formula." Amsterdam, Prospectives on the Fourth Amendment, 58 Minn. L. Rev. 349, 385 (1974).

Prior to *Katz*, a number of formulas had been applied seeking a ready made answer as to when a party was entitled to the protection of the Fourth Amendment. In *Hester v. United States*, 265 U.S. 57 (1924) this Court held as an absolute rule that the protection of the Fourth Amendment did not apply to people who were in open fields. This decision, based on the premise, that people who were visible from a vantage point, outside their property could not expect to keep their actions private soon expanded, so that an "open field" became anything that was not within the curtilage of certain property, whether it was visible from outside the property or not. *Care v. United States*, 231 F.2d 22, 25 (10th Cir. 1956).

This sort of mechanistic approach was precisely what

the Supreme Court rebelled against in *Katz*, with its holding that the Fourth Amendment protected people and not places. Several courts in reaction to *Katz* held that "*Hester* no longer has any independent meaning, but merely indicates that open fields are not areas in which one traditionally might reasonably expect privacy." *United States v. Freie*, 545 F.2d 1217, 1223 (9th Cir. 1976). The Supreme Court of Colorado is an en banc decision further held in *People v. Weisenberger*, 516 P.2d 1128 (1973) that property outside of the curtilage may be a constitutionally protected area provided that the occupant of the property had a reasonable expectation of privacy. "Thus, the proper focus is no longer on common law property concepts." *Wattenburg v. United States*, 388 F.2d 853, 857 (9th Cir. 1968).

A number of courts however have continued to apply common law concepts of property in such an arbitrary fashion as to suggest that they are ignoring the prescriptions of *Katz* to review cases on a case by case basis. The court in *United States v. Williams*, 581 F.2d 451 (5th Cir. 1978) after recognizing *Katz* held, "that open fields surrounding a house are not protected under the Fourth Amendment and that a search of them need not be accompanied by a warrant issued upon probable cause." That case then proceeded to define curtilage by citing to *Hodges v. United States*, 243 F.2d 281 (5th Cir. 1957), a pre *Katz* case. In *United States Ex Rel. Saiken v. Bensinger*, 546 F.2d 1292 (7th Cir. 1976), the Court did not refer at all to *Katz* and cited *United States v. Sorce*, 325 F.2d 84 (7th Cir. 1964) a pre *Katz* case in holding that, "the protection of the Fourth Amendment does not extend to open fields." The systematic formulation of this case was emphasized by the fact that the case included a chart attempting to set forth specific standards in terms

of distance in order to define curtilage. The open field doctrine was also adopted by the Court in *United States v. Basile*, 569 F.2d 1053 (9th Cir. 1978).

Petitioners assert herein that the decisions of *Williams*, *Bensinger* and *Basile* are incorrect in that they fail to make case by case determinations as anticipated by *Katz*. Petitioner further asserts that the Supreme Court of Louisiana in holding against the petitioners relied to too great a degree on the "open fields—curtilage" doctrine and in doing so neglected to consider the fundamental question of whether the petitioners reasonable expectation of privacy was violated. This is of the utmost significance in the case at hand, since if their reasonable expectation of privacy was violated, the entry onto the property in question by law enforcement officers would be a search as contemplated by the Fourth Amendment. *United States v. Jackson*, 585 F.2d 653 (4th Cir. 1978). Such a search would of course need be supported by probable cause (The Supreme Court of Louisiana conceded that lacking the trespass and the fruits derived therefrom, there was no probable cause) and absent such probable cause any evidence seized pursuant to it should have been suppressed. *Wong Sun v. United States*, 371 U.S. 471 (1963); *United States v. Cruz*, 581 F.2d 535 (5th Cir. 1978).

The Supreme Court of Louisiana in its opinion did take note of *Katz* and further took note of several of its own cases in which it gave paramount consideration to the concept of "reasonable expectation of privacy." In considering the case at hand however, the Court was too quick to resort to outmoded property right concepts and in so doing found them to be dispositive of the issue, instead of being merely a factor to consider as to whether

there had been a violation of the petitioner's reasonable expectation of privacy.

Here the activities which were the subject of the surveillance took place in the evening under cover of darkness. They were further conducted at a removed rural compound and were done in such a manner that they were not visible from the public roads which boarded the compound. In addition they were concealed by fields of growing sugar cane which was high enough and dense enough to conceal two law enforcement agents. Finally, the trucks which were used in the activities under question were backed flush to one another, allowing the observing agents a very short period of time to observe their contents. At least part of the observation which was made was conducted by use of night viewing equipment. (T-470-484). From these facts it is no doubt clear, that the petitioners exhibited an actual subjective expectation of privacy.

The above facts would also be relevant as to whether the expectation of privacy was one that society was prepared to recognize as reasonable. Also relevant would be the nature and extent of the intrusion since, "those more extensive intrusions that significantly jeopardize the sense of security which is the paramount concern of Fourth Amendment liberties" are searches. Harlan J. dissenting in *United States v. White,* 401 U.S. 745 (1971). Here, the intrusion was extensive. The observation which was begun around 3:00 p.m. continued past midnight. In addition, several officers committed a trespass onto the property in question and secreted themselves for an excess of four hours, and used night viewing equipment as noted above. Such activities cannot be reasonably anticipated by parties who seek to have a reasonable expecta-

tion of privacy.

Of special interest in the case at hand is the trespass. Petitioner does not seek to assert that any trespass automatically violates a reasonable expectation of privacy, since it like "open fields" is a common law property concept. Nonetheless, it is relevant to the extent that "it represents an invasion of a defendant's reasonable expectation of privacy." *United States v. Jackson, supra,* 659. Also relevant in this regard is the case of *United States v. Carriger,* 541 F.2d 545, 549 (6th Cir. 1976) which held that "trespassing is one form of intrusion by the government that may violate a person's reasonable expectation of privacy." This view was justified under *Katz* the court noted, since the "determination that the trespass doctrine could no longer be regarded as controlling was intended to expand the protection afforded by the Fourth Amendment". The practical result however, has been the abandonment of the concept of trespass, while the concepts of "open fields" and "curtilage" have been allowed to grow and flourish.

Such a result orientation seems to have motivated the Supreme Court of Louisiana in the case at hand. Faced with the question of whether the Petitioners should have taken steps to conceal themselves and their activities from those who trespassed onto their property and concealed themselved in a sugar cane field for an extensive period of time, the Court saw fit to decide the case on the fact that no signs, fences or gates were posted to exclude the public. (A-4). This combined with the "open fields-curtilage" distinction was sufficient for them to affirm the conviction, although even in this regard, the Court never stated as a matter of law that the petitioners were outside the curtilage. (In adopting this distinction,

the Court adopted what they believed to be the Fifth Circuit rule, "that the search of open fields surrounding a house are not protected under the Fourth Amendment"). (A-4) Such a holding not only restricts the application of the Fourth Amendment, but flies directly in the face of previous case law enunciated by that very Court.

In *State v. Byers*, 359 So.2d 84 (1978), the Supreme Court of Louisiana overturned a conviction for a small amount of marijuana noting that the "open fields" doctrine of *Hester* did not apply and further holding that, "The question of whether the property was legally posted in compliance with state law is not decisive, and the issue is one of expectation of privacy." This view is in line with the case of *State v. Fearn*, 345 So.2d 468 (1977) which overturned a conviction for a small number of marijuana plants which were not visible except under close inspection. There, as in the case at hand, the only boundaries were natural ones. There however (despite the similarities of the case), the Court held that the appellants were entitled to a reasonable expectation of privacy.

Ultimately, the Fourth Amendment is meant to insure the right to be left alone. Increasingly however, Courts have sought to erode this right, by limiting the application of the Fourth Amendment. By continuing to apply property concepts, the courts have instead of liberalizing the Fourth Amendment, given themselves an easy handle to adopt in order to justify a pre-ordained result. Consequently, assertion of Fourth Amendment rights, will be limited to those few who adopt mechanistic precautions and not to those who honestly and correctly believe that they are entitled to a reasonable expectation of privacy. Such a result would be contrary to *Katz* and the Fourth Amendment and accordingly, the Supreme Court should issue a writ of certiorari.

CONCLUSION

Based on the foregoing reasons, the Petitioner contends that the Supreme Court for the State of Louisiana erred in its decision concerning the novel issue presented to it and misapplied controlling authority to the circumstances involved in Petitioner's situation. Thereafter, a Writ of Certiorari should issue to review the judgment of the Supreme Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I have this day served, the Attorney General, New Orleans, Louisiana with a copy of this pleading by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 12th day of May, 1980.

By: Edward T. M. Garland
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APPENDIX A

Dec. 13, 1979

SUPREME COURT OF LOUISIANA

NO. 64,762

STATE OF LOUISIANA

VERSUS

JEFF H. DUPUIS, BERNIS H. DAVIDSON, JOHN R. PERDIAN, WILBUR L. SMITH, JONATHAN GRASSI, JAMES R. GREEN, JR. AND LARRY A. CANNON

On Appeal from the 16th Judicial District Court, Parish of St. Martin
Hon. Edward A. de la Houssaye, III, Judge

BLANCHE, Justice.*

The defendants were charged by a bill of information with the possession of marijuana with the intent to distribute in violation of La. R.S. 966(a). After the defendants' motion to suppress the twenty tons of marijuana as evidence was denied, they plead guilty reserving all rights to appeal the denial of the motion to suppress. Each defendant was sentenced to three years at hard labor and fined $15,000, in default of which each would serve two years.

The police were led to the Dupuis property and the marijuana through a series of events beginning with the

*Honorable Jesse N. Stone, Jr. served as Justice Ad Hoc in the vacancy created by the resignation of Tate, J.

discovery of an aircraft in Georgia loaded with 23,000 pounds of marijuana. The aircraft was registered to Marvin Zylstra. A few days before Jeff Dupuis had rented a car as the agent of Marvin Zylstra from an Avis Rent-a-Car facility in the Dalton, Alabama airport. After a check of the Breaux Bridge, Louisiana address given by Dupuis, a refrigerated truck was found on the property. This truck was registered to a Mr. Zerbe, who was also known to be an associate of Zylstra through information obtained from the El Paso Intelligence Center. On June 11, 1978, the refrigerated truck left the Dupuis property and returned June 15, 1978 along with two bobtail trucks bearing Georgia license plates. In light of this information, the authorities expected the trucks to depart shortly to pick up a load of marijuana. Therefore, a joint task force of United States Customs Air Officers and Louisiana State Police commenced a surveillance of the Dupuis residence in order to determine when the trucks would leave.

The rural residential area under police surveillance was a corner tract on which is located a house belonging to the defendant Jeff Dupuis, and a mobile home occupied by the defendant Bernis Davidson. This compound was bounded on the west by State Highway 349, on the north by a parish road, and on the east and south by fields of sugar cane. Between the sugar cane field and the house ran a shell road.

Until 7:30 p.m., the officers' activities consisted of simply a roving surveillance on the public roads. At 7:30 p.m., two officers proceeded by foot from the parish road on the north side of the property through the sugar cane field to a point south of the Dupuis yard. About 11:00 p.m., the officers noticed that the thre etrucks parked on

the private road between the residence and the fields were being maneuvered for some loading operation. When the rear doors of the trailer were opened, one of the officers, through the use of night viewing equipment, observed large bales of a substance he presumed to be marijuana because of the size and shape of the bales. Later, when the first bobtail truck moved from the back of the trailer, the interior light of the truck allowed the officers to see the bales with their unaided eyes. At this point, the officers attempted to obtain a telephone search warrant. After obtaining the warrant, the officers moved in and arrested the defendants and seized the trucks and their contents.

The state has stipulated that the warrant obtained by the officers is invalid since the requirements for a telephone search warrant had not been met. Based upon these facts, the trial court denied the defendants' motion to suppress. The defendants have urged that the original trespass onto their property (the sugar cane fields) for the purpose of observing their activities violated their Fourth Amendment right to privacy. In Katz v. U.S., 389 U.S. 347 (1967), the United States Supreme Court abandoned the notion that the Fourth Amendment protection was implemented in certain "constitutionally protected areas". The courts will now look to the defendant's reasonable expectation of privacy in determining whether the Fourth Amendment applies. In determining whether one has a reasonable expectation of privacy, the test is not only whether the person had an actual or subjective expectation of privacy but also whether their expectation of privacy is of the type which society at large is prepared to recognize as being reasonable. State v. Wilbourn, 364 So.2d 995 (La. 1978). In applying the test,

it has been held that a search and seizure conducted on the private land of defendant for marijuana violated the Fourth Amendment where the marijuana was not visible from the public road and the private road was posted and a chain barred access to the private road. State v. Byers, 359 So.2d 84 (La. 1978).

In State v. Fearn, 345 So.2d 468 (La. 1977), the court found that the defendant had a reasonable, although not justified, expectation of privacy because his marijuana plants could not be seen from his parents' house. For this reason, the seizure was held invalid. However, the court noted that the initial viewing of the plants from the neighbor's yard by the police was not an intrusion since the plants were clearly visible from this point.

In examining the reasonableness of the defendant's expectation of privacy, the distinction between open fields and curtilage may be helpful. The Fifth Circuit has held that the search of open fields surrounding a house are not protected under the Fourth Amendment since there is no reasonable expectation of privacy. U.S. v. Brown, 473 F.2d 952 (5th Cir. 1973). Thus, in U.S. v. Williams, 581 F.2d 451 (5th Cir. 1978), the Fifth Circuit upheld the seizure of moonshine from the defendant's shed where officers had detected the odor of mash while standing outside the curtilage of defendant's home despite the fact that they had trespassed onto his property.

In the instant case, the field from which the defendants' operations were observed was leased to others for agricultural purposes. Thus, the field like the neighbor's yard in *Fearn*, was not exclusively in the control of the defendant. There were no signs, fences or gates to exclude the public as in *Byers* from the area. In fact, any stranger could have driven down the shell road or been in the

field and observed the defendants' loading activities.

As in *Williams*, the police's observations were made from a field outside the curtilage of the Dupuis home. Although the officers were trespassing, the defendants had no reasonable expectation of privacy as to this field. Of course, the use of extrasensory means of probing does increase the extent of an intrusion. The problem created by the use of night viewing equipment is pretermitted here since the police officer testified that he was able to clearly discern the characteristic wrappings of bales of marijuana with his unaided eyes as the bobtail truck pulled off. Therefore, we conclude that the initial sighting of the marijuana by the officers from the sugar cane field did not violate the Fourth Amendment since the defendants had no reasonable expectation that their activities would remain private.

The state has conceded that the telephone search warrant is invalid. Therefore, the seizure of the trucks and their contents must be justified as a warrantless seizure. The rule is well established that warrantless searches and seizures are unreasonable unless they fit within one of the limited number of well-delineated exceptions to the warrant requirement. State v. Guzman, 362 So.2d 744 (La. 1978); State v. Daigre, 364 So.2d 902 (La. 1978).

One of these exceptions to the warrant requirement is the so-called "automobile exception". This exception is based upon the existence of probable cause to search the vehicle and exigent circumstances which render it impractical to secure a warrant. State v. Spencer, 374 So.2d 1195 (La. 1979).

In determining whether the officers had probable cause to seize the marijuana, we must determine if under the

facts and circumstances known to the police at the time of the seizure, a reasonable person would conclude that contraband was present. In this case, officers received information from various criminal intelligence sources linking the defendants with persons suspected of narcotics trafficking in Georgia. The officers observed three trucks being maneuvered in total darkness into a loading position. Further, from their position in the cane field, they saw what appeared to be bales of marijuana.

Although the sighting of the bales alone may have been sufficient to justify a belief that contraband was present, it should be noted that there were other underlying facts which supported the police's suspicions. Customs officials had discovered an abandoned plane in Georgia filled with marijuana and registered to Marvin Zylstra. The defendant, Jeff Dupuis, had rented a car in Alabama as Mr. Zylstra's agent. Further, officers discovered a refrigerated truck at the Dupuis residence which was registered to Mr. Zerbe, an associate of Mr. Zylstra. The officers testified that such refrigerated trucks are a common method of transporting marijuana. This information, although insufficient in itself to establish probable cause, was enough to arouse police suspicions. The subsequent arrival of trucks bearing Georgia license plates, the midnight loading activities and the sighting of the bales combined with the other information were sufficient facts and circumstances to constitute probable cause.

We also conclude that exigent circumstances existed. One of the bobtail trucks had already been unloaded into the refrigerated truck within 20 or 30 minutes. At this point, the officers tried to get the warrant. After another 20 minutes had passed, it was reasonable to conclude that the loading operations were almost complete and that

the trucks would be leaving. Since the departure of the trucks was imminent, the officers were justified in moving in to arrest the defendants and seize the trucks without waiting to secure a warrant. See State v. Spencer, supra. The trial court properly denied the defendants' motion to suppress since the search and seizure did not violate the Fourth Amendment's protection against unreasonable searches and seizures.

For the reasons assigned, the judgment of the trial court is affirmed.

AFFIRMED.

* * *